

## **MASSACHUSETTS SUPERIOR COURT BUSINESS LITIGATION SESSION: FREQUENTLY ASKED QUESTIONS**

### **What is the Business Litigation Session (BLS)?**

The BLS is actually two sessions (BLS1 and BLS2) of the Superior Court for Suffolk County. Instituted in 1999, the BLS provides a forum for business and commercial disputes which, because of their complexity, will benefit from individualized and collaborative case management. Examples of the types of cases litigated in the BLS are: shareholder derivative claims, disputes concerning intellectual property and trade secrets, suits to enforce restrictive covenants in employment agreements, business torts, claims arising from the sale of assets or corporate mergers, shareholder and consumer class actions, insurance coverage disputes, and other categories enumerated in [Superior Court Administrative Directive No. 17-1](#). The mission of the BLS is to resolve those disputes in a timely and efficient manner and to issue reasoned opinions that will foster the development of a consistent body of law on recurring issues of importance.

A more detailed Mission Statement of the BLS may be found [here](#).

### **When and how is a case assigned to the BLS?**

A plaintiff wishing to file a case in the BLS should file the Complaint in the Suffolk Superior Court, using the [BLS Civil Action Cover Sheet](#). The Administrative Justice of the BLS will issue a notice of acceptance or denial and, if the case is accepted, will assign it to BLS1 or BLS2. Cases not accepted into the BLS will be assigned to a Suffolk County time standards session.

Cases may also be transferred to the BLS from a time standards session on motion by any party or by the judge, sua sponte. See [Superior Court Administrative Directive No. 17-1](#) (discussing transfers into the BLS and sua sponte transfers into the BLS). The procedure for instituting a transfer is specified in [Superior Court Administrative Directive No. 17-1](#).

Please note that if you have not received notice from the court as to whether a case has been accepted into the BLS, you may contact the BLS1 or BLS2 session clerk for a status update. If you are seeking *ex parte* relief or a short order of notice, it is often helpful to contact the BLS2 session clerk at the time of filing so the court is aware of your request.

### **What about venue?**

Because both BLS sessions are located in Boston, there must be venue in Suffolk County, or a waiver of venue. See [Superior Court Administrative Directive No. 17-1](#) for details.

**If I wish to have the case accepted into the BLS, can I still get a timely decision on any request for *ex parte* relief or for a short order of notice?**

Yes. As outlined in [Superior Court Administrative Directive No. 17-1](#), the BLS Administrative Justice will first decide if the case is accepted into the BLS and if it is, rule on the request or have the BLS judge to whom the case is assigned decide the request. If the case is not accepted into the BLS, then it will be assigned to a regular Suffolk County civil session and the request will be handled by the judge assigned to that regular civil session. In either event, the goal is to ensure that the request for *ex parte* relief or for a short order of notice is decided on the day that the case is filed.

In addition, if you have an extremely time-sensitive request for *ex parte* relief or for a short order of notice, it would be helpful to bring a courtesy copy of those pleadings, along with a courtesy copy of the complaint, to the clerk's office. While the clerk's office enters the case into the MassCourts system, you can then bring the courtesy copies to the BLS2 session clerk for expedited review.

**Does the BLS try jury cases?**

Yes, according to the same rules and procedures as other Superior Court sessions.

**What sort of case management does a BLS case receive?**

Soon after the pleadings are closed, every BLS case is called in for a Rule 16 conference. As the [conference notice](#) makes clear, counsel are expected to confer and to come to the conference with agreed or separately proposed schedules for major case milestones (discovery completed, Rule 56 motions filed, final pretrial conference, etc.), and should be prepared to discuss all other matters likely to arise (notably, where applicable, e-discovery related matters enumerated in [Mass. R. Civ. P. 26\(f\)](#)). Counsel will also be asked to consider options set forth in [Superior Court Rule 20](#), which provides a menu of choices intended to streamline litigation and reduce costs.

Additional case management conferences will be held on request of a party or the Court. Issues (discovery or otherwise) needing prompt resolution may be brought before the Court formally (by motion) or informally (by telephone call to the session clerk, following discussion among counsel, to schedule a hearing).

**What is the BLS Discovery Project?**

The BLS Discovery Project aims to reduce the costs of discovery through planning, automatic disclosures, and proportionality. Participation is by voluntary agreement of all parties. See the [Introduction to BLS Discovery Project](#) for details. See also [BLS Rule 16 Conference Notice](#) (describing aspects of the BLS Discovery Project that parties should be prepared to address).

### **What else should I know about discovery in the BLS?**

BLS cases tend to be document-intensive. Counsel practicing in the BLS should familiarize themselves with the following:

- [Mass. R. Civ. P. 26 - 37](#), and particularly the recent revisions to [Rule 26](#), especially subsections (b)(5) regarding privilege logs and (f) regarding electronic discovery.
- Superior Court Rule 30A: Written Discovery, available [here](#).
- Superior Court Rule 30B: Expert Disclosures, available [here](#).
- Formal Guidance of the Business Litigation Sessions Regarding Confidentiality Agreements dated January 2, 2008, available [here](#).

### **Does the BLS have any specific rules regarding impoundment?**

The BLS follows the Trial Court's Uniform Rules of Impoundment Procedure, which may be found [here](#).

### **Does the BLS have a “culture” and/or any special rules regarding dispositive motions? What about partially dispositive motions?**

Given the nature of the BLS caseload, dispositive motions – successful and otherwise – under Rules 12(b), 12(c), and 56 are a fact of life. Counsel are encouraged to examine carefully and realistically the prospects for success before serving and filing such motions, since they can be quite costly to litigants and time-consuming for the court.

In particular, counsel should be aware of the [BLS Procedural Order Regarding Partially Dispositive Motions dated March 1, 2019](#) requiring leave of court for partially dispositive motions. Motions that are addressed to the disposition of some but not all of the claims or issues on behalf of or against a party in a case consume substantial amounts of the Court's and the parties' time and resources but often do not substantially reduce the length of the litigation or trial. *No such partially dispositive motion shall be served until after a status conference with the Court, which will be scheduled by the clerk at the request of the moving party.* Failure to request and attend a status conference as required by the procedural order is grounds for automatic denial of any partially dispositive motion. Moreover, a party filing any partially dispositive motion must include in the package of materials to be filed with the court a **“Certificate of Compliance”** expressly stating that this procedural order has been followed. Since two different BLS judges share each session, it is important for the parties to include the Certificate of Compliance with the motion package in the event that the judge ultimately hearing the partially dispositive motion is not the same judge who conducted the status conference allowing the parties to file such a motion. Failure to include a Certificate of Compliance is also grounds for automatic denial of any partially dispositive motion.

With respect to motions filed under Rule 56, counsel are strongly advised to take special care to comply with the requirements of [Superior Court Rule 9A\(b\)\(5\)](#) regarding the statement of facts and the record. Non-complying papers are apt to be returned. For a particularly good discussion

of this rule and its importance to judges, see [this article](#). The article recognizes that Superior Court Rule 9A(b)(5)'s "[only] purpose, quite simply, is to help the judge find his or her way around the record, as efficiently as possible." Unnecessarily confusing, voluminous, or argumentative submissions are not helpful.

In any motion (summary judgment, preliminary injunction, etc.) with a particularly voluminous record, counsel are encouraged to supply electronic copies in PDF and Word format on a USB flash drive or DVD, with hyperlinked references in the briefs, proposed findings of fact, etc.

Where the briefs cite extensively to federal or other non-Massachusetts case law, statutes, or regulations, counsel are encouraged to supply copies (paper or electronic) with the motion papers.

For any BLS motion (dispositive or otherwise), a reply memorandum – but not a sur-reply – not exceeding ten pages is allowed without leave of court. See the BLS Procedural Order Regarding Reply Memoranda dated March 1, 2019, available [here](#). Note that in the BLS, a reply memorandum of up to ten pages in length is permissible and that this differs from the five page limit set forth in Superior Court Rule 9A. To the extent that any party seeks to file a reply memorandum in the BLS exceeding ten pages in length, any sur-reply, or subsequent memorandum, the party must seek specific leave of court in the manner provided by Superior Court Rule 9A.

Finally, the BLS has a "Formal Guidance" document regarding Motions for Reconsideration, available [here](#).

**Is there somewhere that BLS standing orders, etc. may be found?**

Yes – on [this website](#)! Other Superior Court Rules, Standing Orders, and Administrative Directives – many of which apply to BLS cases – may be found [here](#) and in the Massachusetts Rules of Court published by Thomson Reuters.

**Where may reported decisions of BLS judges be found?**

The BLS judges submit all of their written decisions for electronic access through the [Social Law Library](#), which may be accessed on [Social Law's Substantive Law Database](#), and to [Massachusetts Lawyers Weekly](#). Some decisions are also available on [Westlaw](#), [LexisNexis](#), [Fastcase](#), and through the [Massachusetts Law Reporter](#).

**Who are the judges that are currently assigned to the BLS?**

Presently, BLS1 is staffed by Judges Kaplan (January-June) and Davis (July-December). Judges Salinger (January-June) and Sanders (July-December) sit in BLS2. Judge Sanders serves as the BLS Administrative Justice.

Judges, at their discretion, may retain jurisdiction over a BLS case when assigned to a non-BLS session.

**Who are the judges that previously sat in the BLS?**

Current Superior Court Justices Thomas P. Billings, Peter M. Lauriat, Edward P. Leibensperger, Christine M. Roach, and Chief Justice Judith Fabricant; Retired Superior Court Justices E. Susan Garsh, Margaret R. Hinkle, Stephen E. Neel, and Allan van Gestel; and Retired Associate Justice of the Supreme Judicial Court Margot Botsford and Current Chief Justice of the Supreme Judicial Court Ralph D. Gants. Former Chief Justices of the Superior Court Suzanne V. DelVecchio and Barbara J. Rouse were instrumental in creating and overseeing the BLS.

**How do I contact a BLS session clerk?**

In BLS1, Margaret Buckley, Assistant Clerk, 617-788-8181 ([Courtroom 1309](#))

In BLS2, Richard Muscato, Jr., Assistant Clerk, 617-788-8152 ([Courtroom 1017](#))

Revised: August 1, 2019